

Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GABRIEL KORTLEVER, SY EUBANKS,  
and ALL OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

WHATCOM COUNTY, WASHINGTON;  
WHATCOM COUNTY SHERIFF'S OFFICE,

Defendants.

Case No. 2:18-cv-00823

~~PROPOSED~~ ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT  
AND DIRECTING NOTICE TO  
PLAINTIFF CLASS

*JLR*

Plaintiffs Gabriel Kortlever and Sy Eubanks have applied for an order preliminarily approving the settlement of this class action as described in the Settlement Agreement, attached as Exhibit 1 to the Declaration of Lisa Nowlin in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Nowlin Decl."). The Court has considered the Settlement Agreement, the proposed notice, and the briefing and declaration submitted in support of preliminary approval of the settlement and is fully advised.

**THEREFORE, THE COURT FINDS AND CONCLUDES AS FOLLOWS:**

1. Unless otherwise provided herein, all capitalized terms in this Order shall have the same meaning as set forth in the Settlement Agreement.

2. The Court preliminarily approves the Settlement Agreement and the terms set forth therein—including the relief afforded the Settlement Class, the modest incentive

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1 rewards to class representatives, and the payment of attorneys' fees and costs to Class  
2 Counsel (including costs for notice and settlement administration)—as being fair, reasonable  
3 and adequate. The Settlement Agreement is the result of arm's-length negotiations between  
4 experienced attorneys who are familiar with class action litigation in general and with the  
5 legal and factual issues of this case in particular.

6 3. For purposes of settlement only, this Court certifies this case as a class action  
7 under Federal Rule of Civil Procedure 23(b)(2). For the reasons stated in Plaintiffs' Motion  
8 for Preliminary Approval of Class Action Settlement, the Class satisfies the elements of Rule  
9 23(a) and Rule 23(b)(2) and thus a class action, for purposes of settlement only, is  
10 appropriate.

11 4. Pursuant to Fed. R. Civ. P. 23(b)(2), the Court conditionally certifies for  
12 settlement purposes only the following Settlement Class: "All non-pregnant individuals with  
13 disabling opioid use disorders ("OUD") who are incarcerated, or who will be incarcerated in  
14 the future, in the Whatcom County Jail."

15 5. In connection with these conditional certifications, the Court makes the  
16 following findings:

- 17 a. The Settlement Class is sufficiently numerous to meet the requirement of  
18 Rule 23(a)(1). The Class includes all non-pregnant individuals with  
19 disabling OUD who are incarcerated, or who will be incarcerated in the  
20 future, in the Whatcom County Jail and joinder of all such persons would  
21 be impracticable. *See* Fed. R. Civ. P. 23(a)(1).
- 22 b. The commonality requirement is satisfied because there are many questions  
23 of law and fact common to the Settlement Class that center on Defendants'  
24 alleged systemic policy and practice of denying medication used to treat  
25 opioid use disorders for non-pregnant individuals in violation of Title II of  
26 the ADA. *See* Fed. R. Civ. P. 23(a)(2).

1 c. The typicality requirement is satisfied because Plaintiff's claims, which are  
2 based on the alleged discriminatory denial of necessary medication services  
3 needed to treat their opioid use disorders, resulting in withdrawal, an  
4 increased risk of relapse, and a heightened likelihood of overdose death,  
5 are "reasonably coextensive with those of the absent class members." *See*  
6 Fed. R. Civ. P. 23(a)(3).

7 d. The adequacy of representation requirement is satisfied because Plaintiffs'  
8 interests are coextensive with, and not antagonistic to, the interests of the  
9 Settlement Class. *See* Fed. R. Civ. P. 23(a)(4). Further, Plaintiffs are  
10 represented by qualified and competent counsel who have extensive  
11 experience and expertise in prosecuting class actions.

12 6. The Court appoints Plaintiffs Gabriel Kortlever and Sy Eubanks as Class  
13 Representatives.

14 7. The Court appoints Lisa Nowlin and John Midgley of the American Civil  
15 Liberties Union of Washington Foundation, and Bart Freedman of K&L Gates LLP, as co-  
16 lead counsel for the Settlement Class.

17 8. A final approval hearing ("Final Approval Hearing"), for purposes of  
18 determining whether the settlements should be finally approved, shall be held before this  
19 Court on Tuesday, July 9, 2019 at 10:00am in the courtroom of the  
20 Honorable James L. Robart at the United States Courthouse, 700 Stewart Street, Suite 14128,  
21 Seattle, WA 98101. At the hearing, the Court will hear arguments concerning whether the  
22 proposed settlement on the terms and conditions provided for in the Settlement Agreement  
23 should be granted final approval by the Court as fair, reasonable, and adequate.

24 9. The Court approves, as to form and content, the Notice of Proposed Class  
25 Action Settlement (the "Notice") to be made available to the Settlement Class Members,  
26 which is attached to the Nowlin Decl. as Exhibit 2. In addition, the Court finds that the

*JLR*

1 distribution of the Notice substantially in the manner set forth in Paragraph 10 of this Order  
2 and Section 4.3 of the Settlement Agreement will meet the requirements of due process and  
3 applicable law, will provide the best notice practicable under the circumstances, and will  
4 constitute due and sufficient notice to all individuals entitled thereto.

5 10. The procedure for distributing the Notice shall be as follows:

- 6 a. Defendants will post the Notice in the living quarters and the medical  
7 unit(s) at the Whatcom County Jail.  
8 b. A copy of the Settlement Agreement will be made available to any inmate  
9 upon request.  
10 c. Defendants shall arrange for the Notice and copies of the Settlement  
11 Agreement to be posted at local community health centers, including Sea  
12 Mar Community Health Center, Catholic Community Services, Cascade  
13 Medical Advantage, Pioneer Human Services, and Lummi Healing Spirit  
14 Clinic.

15 11. No later than 14 days before Final Approval Hearing Class Counsel shall file a  
16 motion requesting that the Court grant final approval of the Settlement Agreement, including  
17 payment of \$1,000 each to the class representatives and \$25,000 for attorneys' fees and  
18 expenses, and enter final judgment in the Action.

19 12. Settlement Class Members who wish to submit comments or objections to the  
20 Settlement Agreement must file written submissions with the Court on or before  
21 June 29, 2019. The comments should contain a caption or heading  
22 similar to the one on this Order and should, at a minimum, include the case number (No. 2:18-  
23 cv-00823) in a prominent place on the front page. Any submissions shall be mailed to:


24 Honorable James L. Robart  
25 United States Courthouse  
26 700 Stewart Street, Suite 14128  
Seattle, WA 98101



13. The parties shall submit any responses to objections no later than sixty-five (65) calendar days after the Court's entry of preliminary approval of the settlement. At the Final Approval Hearing, the Court shall determine whether the proposed Settlement Agreement shall be finally approved.

14. If final approval does not occur as to the Settlement Agreement, or if the Settlement Agreement is terminated or canceled pursuant to its terms, the parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of the agreement, and the agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be admitted, referred to or utilized by any party for any purpose whatsoever.

DATED this <sup>23</sup>23 day of May, 2019.



Hon. James L. Robart

Presented By

By s/Bart Freedman  
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4 *Attorney for Plaintiffs Gabriel Kortlever,*  
5 *Sy Eubanks, and All Others Similarly Situated*  
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CERTIFICATE OF ECF FILING AND SERVICE

I certify that on April 29, 2019, I arranged for electronic filing of the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record:

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Mark Cooke  
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s/ Bart Freedman

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